

TOWN OF KITTERY, MAINE

200 Rogers Road, Kittery, ME 03904
Telephone: (207) 475-1329 Fax: (207) 439-6806

December 8, 2014

Kittery Town Council
Requested by Chairperson Jeffrey Thomson
Special Meeting Agenda
6:00 p.m.

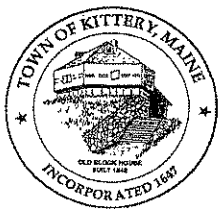
Council Chambers

1. Call to Order
2. Introductory
3. Pledge of Allegiance
4. Roll Call
5. EXECUTIVE SESSIONS

a. (120114) The Kittery Town Council moves to go into Executive Session with the Town Manager and Human Resource Manager, in accordance with 1 M.R.S. §405 (6) (D), to discuss labor contract negotiations.

6. ADJOURNMENT

Posted: December 4, 2014



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December 8, 2014

Council Chambers

Kittery Town Council
Regular Meeting
7:00 p.m.

1. Call to Order
2. Introductory
3. Pledge of Allegiance
4. Roll Call
5. Agenda Amendment and Adoption
6. Town Manager's Report
7. Acceptance of Previous Minutes – 11/10/14 & 11/24/14
8. Interviews for the Board of Appeals and Planning Board

Board of Appeals:

- Vern Gardner until 3/25/16 (filling the unexpired term of Norm Leon)

9. All items involving the town attorney, town engineers, town employees or other town consultants or requested officials.

10. PUBLIC HEARINGS

a. (120114-1) The Kittery Town Council moves hold a public hearing and hereby ordains amendments to Title 16, Chapters 16.10, 16.2, 16.3, 16.7, and 16.8 of the Kittery Town Code, as recommended by the Planning Board.

11. DISCUSSION

- a. Discussion by members of the public (three minutes per person)
- b. Response to public comment directed to a particular Councilor
- c. Chairperson's response to public comments

12. UNFINISHED BUSINESS

13. NEW BUSINESS

- a. Donations/gifts received for Council disposition

b. (120114-2) The Kittery Town Council moves to extend the existence of the Economic Development Committee (EDC) past its current sunset date of 12/31/14, to a future date certain of December 31, 2015, at which time Council will review the status of the EDC and its continued need.

c. (120114-3) The Kittery Town Council moves to appoint Robert Harris to the Personnel Board until 11/30/17.

d. (120114-4) The Kittery Town Council moves to approve the disbursement warrants.

e. (120114- 5) The Kittery Town Council moves to appoint a representative to meet with a member of the Rice Library Board of Trustees to interview William Tredwell for his appointment to that board.

f. (120114-6) The Kittery Town Council moves to appoint a representative to meet with the Chair of the Comprehensive Plan Update Committee to interview Tom Hibschan for his appointment to that board as a citizen representative until _____.

g. (120114-7) The Kittery Town Council moves to appoint Paul Lucy to the Personnel Board until 11/30/16.

14. COUNCILOR ISSUES OR COMMENT

15. COMMITTEE AND OTHER REPORTS

- a. Communications from the Chairperson
- b. Committee Reports

16. EXECUTIVE SESSION:

17. ADJOURNMENT

Posted: December 4, 2014

UNAPPROVED MINUTES

KITTERY TOWN COUNCIL

November 10, 2014

COUNCIL CHAMBERS

1. Call to Order

Chairperson Thomson called the meeting to order at 7:00 P.M.

2. Introductory

Chairperson Thomson read the introductory.

3. Pledge of Allegiance

Chairperson Thomson led those present in the Pledge of Allegiance.

4. Oath of Office to Newly Elected Officials

Town Clerk place administered the Oath of Office to Councilor Spiller and Councilor Lemont.

5. Roll Call

Answering the roll were Chairperson Jeffrey Thomson, Councilors Russell White, Frank Dennett, Chuck Denault, Jeffrey Pelletier, Judy Spiller and Ken Lemont.

6. The Kittery Town Council moves to elect a Chairperson for the ensuing year.

COUNCILOR DENAULT MOVED TO ELECT COUNCILOR THOMSON AS CHAIRPERSON FOR THE ENSUING YEAR, SECONDED BY COUNCILOR LEMONT.

A ROLL CALL VOTE WAS TAKEN WITH COUNCILOR DENNETT OPPOSED. MOTION PASSES 6/1.

7. The Kittery Town Council moves to elect a Vice Chairperson for the ensuing year.

COUNCILOR DENAULT MOVED TO ELECT COUNCILOR WHITE AS VICE CHAIRPERSON FOR THE ENSUING YEAR, SECONDED BY CHAIRPERSON THOMSON.

A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0.

8. Agenda Amendment and Adoption –

UNAPPROVED MINUTES

28 Councilor Dennett asked that Item 16b be placed between Items 15 a & b under old
29 business. The agenda was accepted as amended.

30 9. Town Manager's Report –

31 Town Manager Puff stated that there was a regional work group on the air traffic noise on
32 November 20 and asked who would be representing Kittery at the meeting.

33 Town Manager Puff indicated that she would be presenting her finding on the right of
34 way issue on Bowen Road at the next meeting.

35 Town Manager Puff noted that the RFP for the master plan for the athletic fields had been
36 released.

37 Town Manager Puff stated that there were 60 applications for the administrative clerk
38 positions and they had hired two people who would be starting that Wednesday.

39 Town Manager Puff noted that she had met with the KPA and they were working
40 together to complete a self-analysis.

41 Town Manager Puff indicated that she and Commissioner Albert had met with the
42 MEDOT relative to the roads in the urban impact area relative to who would be maintaining
43 specific roads. She continued that the DOT had indicated that they would be giving the by-pass
44 back to the town and it may add an additional 20 miles for winter maintenance. Town Manager
45 Puff noted she would be following up on this issue and would update Council in the future as it
46 would not go into effect until 2015.

47 Town Manager Puff noted relative to assessing services, that she was working with the
48 department to summarize their need and would like to release an RFP to see if they could hire a
49 consulting firm to fulfill those functions.

50 Town Manager Puff stated that the town was looking for residents to serve on boards and
51 committees in town.

52 Town Manager Puff indicated that she would be attending a training with the finance
53 director for tax collectors and treasurers.

54 Town Manager Puff noted that an assisted listening device had been installed in Council
55 Chambers.

56 10. Acceptance of Previous Minutes – 10/27/14

57 The minutes of 10/27/14 were accepted as amended.

58 11. Interviews for the Board of Appeals – None

UNAPPROVED MINUTES

12. All items involving the town attorney, town engineers, town employees or other town consultants or requested officials – None

13. PUBLIC HEARINGS -

a. (110214-1) The Kittery Town Council moves to hold a public hearing on the transfer of \$12,500 from unencumbered surplus, authorized by the voters on June 10, 2014, for the purpose of matching \$12,500 in private donations for the preparation of a master plan for the town's athletic fields.

Chairperson Thomson indicated that this item was advertised in the local printed media on November 3, 2014. Chairperson Thomson then opened the public hearing.

Tony Marino came to the podium and stated that he wanted to encourage Council to move forward with the master plan and approve the match. He continued that he thought it was fiscally and environmentally responsible, and the private donations showed the broad reaching interests of this item. Mr. Marino indicated that time was of the essence so that it could be included in the 2015 CIP budget.

Chairperson Thomson then closed the public hearing.

COUNCILOR SPILLER MOVED TO TRANSFER AN AMOUNT NOT TO EXCEED \$12,500 FROM UNENCUMBERED SURPLUS, AUTHORIZED BY THE VOTERS ON JUNE 10, 2014, FOR THE PURPOSE OF MATCHING \$12,500 IN PRIVATE DONATIONS FOR THE PREPARATION OF A MASTER PLAN FOR THE TOWN'S ATHLETIC FIELDS, SECONDED BY COUNCILOR LEMONT.

Councilor Dennett stated that he had been given a figure of 944 participants and wanted to know if those were individuals or if they were counting per sport. Mr. Marino stated that it was counted by the number of participants in each sport. Councilor Denault asked any other teams used the fields besides the schools. Mr. Marino indicated that the number provided was just for the schools, but a number of pick up teams also used the fields. Councilor Lemont asked if they envisioned using the fields for anything other than sports. Mr. Marino stated that they did and there were lots of potential uses. Councilor Spiller stated that it was her understanding that there was an abandoned field behind the KCC and asked that the consultant look at that area. Mr. Marino stated that they would be looking at all usable space. Councilor Dennett stated that he would be voting against this item as he thought it might end up costing the town a lot of money.

A ROLL CALL VOTE WAS TAKEN WITH COUNCILOR DENNETT OPPOSED. MOTION PASSES 6/1.

UNAPPROVED MINUTES

b. (110214-2) The Kittery Town Council moves to hold a public hearing to adopt as an emergency ordinance, pursuant to Section 2.15 of the Town Charter, an amendment to Chapter 4.2.3 of the Kittery Town Code, Procedures for Council Appointments.

Chairperson Thomson stated that this was advertised in the local printed media on November 3rd. Chairperson Thomson opened the public hearing and no response being heard, closed the public hearing.

COUNCILOR DENNETT MOVED TO ORDAIN, AS AN EMERGENCY ORDINANCE, AN AMENDMENT TO CHAPTER 4.2.3 OF THE KITTERY TOWN CODE, PROCEDURES FOR COUNCIL APPOINTMENTS, SECONDED BY COUNCILOR WHITE.

A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0.

c. (110214-3) The Kittery Town Council moves to hold a public hearing on a proposed amendment to Chapter 4.2.3 of the Kittery Town Code, Procedures for Council Appointments.

Chairperson Thomson indicated that this was the same as the prior motion but would make the ordinance permanent in 30 days. Councilor Thomson then noted that this was advertised in the local printed media on November 3rd. Chairperson Thomson then opened the public hearing, and no response being heard, closed the public hearing.

COUNCILOR DENNETT MOVED TO ORDAIN A PROPOSED AMENDMENT TO CHAPTER 4.2.3 OF THE KITTERY TOWN CODE, PROCEDURES FOR COUNCIL APPOINTMENTS, SECONDED BY COUNCILOR SPILLER.

A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0.

d. (110214-3) The Kittery Town Council moves to hold a public hearing on a proposed amendment to Chapter 3.2.10 of the Kittery Town Code, Disposal of Property.

Chairperson Thomson indicated that this public hearing was advertised in the local, printed media on November 3, 2014. Chairperson Thomson then opened the public hearing, and no response being heard, closed the public hearing.

COUNCILOR DENNETT MOVED TO ORDAIN A PROPOSED AMENDMENT TO CHAPTER 3.2.10 OF THE KITTERY TOWN CODE, DISPOSAL OF PROPERTY, SECONDED BY COUNCILOR WHITE.

A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0.

UNAPPROVED MINUTES

125 14. Discussion

126 a. Discussion by members of the public - NONE

127 b. Response to public comment directed at a particular Councilor

128 c. Chairperson's response to public comments

129 15. UNFINISHED BUSINESS –

130 a. (100214-6) The Kittery Town Council moves to appoint Kenneth Lemont to the Port
131 Authority for a term to expire August 31, 2019.

132 Chairperson Thomson stated that they had received a legal opinion which determined that
133 Councilor Lemont could not serve on Council and the KPA at the same time.

134 **COUNCILOR DENNETT MOVED TO POSTPONE THIS ITEM**
135 **INDEFINITELY, SECONDED BY CHAIRPERSON THOMSON FOR DISCUSSION.**

136 **CHAIRPERSON THOMSON MOVED TO AMEND THE MOTION TO ALLOW**
137 **COUNCILOR LEMONT TO GO TO THE TOP OF THE WAITING LIST WHEN HE IS**
138 **NO LONGER SERVING ON COUNCIL, SECONDED BY COUNCILOR DENAULT.**

139 Councilor Lemont stated that he appreciated Chairperson Thomson's motion and would
140 like to not be placed at the bottom of the list. Councilor Dennett indicated that he was opposed
141 to this as it could show favoritism. Councilor Pelletier stated he agreed with Councilor Dennett.

142 **A ROLL CALL VOTE WAS TAKEN ON THE AMENDMENT WITH**
143 **COUNCILOR LEMONT ABSTAINED AND THE REST OPPOSED. MOTION DOES**
144 **NOT CARRY 0/6/1.**

145 **A ROLL CALL VOTE WAS TAKEN ON THE MAIN MOTION WITH**
146 **COUNCILOR LEMONT ABSTAINED. MOTION PASSES 6/0/1.**

147 b. (110214-6) The Kittery Town Council moves to determine an alternate interview
148 protocol for items 15a, b & c.

149 Councilor Dennett explained that this was an effort to solve the procedural problem
150 which existing in appointed members to boards without a chair or members. He continued that
151 this would allow the sitting Council to come up with an alternative interview process.

152 **COUNCILOR DENNETT MOVED TO ORDAIN AN ALTERNATIVE**
153 **INTERVIEW PROCESS PROTOCOL, SECONDED BY COUNCILOR PELLETIER.**

UNAPPROVED MINUTES

A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0.

c. (100114-17) The Kittery Town Council moves to appoint a representative to interview Robert D. Harris, Sr. for his appointment to the Personnel Board.

COUNCILOR SPILLER MOVED TO APPOINT COUNCILOR DENAULT TO INTERVIEW ROBERT D. HARRIS, SR. FOR HIS APPOINTMENT TO THE PERSONNEL BOARD, SECONDED BY CHAIRPERSON THOMSON WITH ALL IN FAVOR. MOTION PASSES 7/0.

d. (100114-18) The Kittery Town Council moves to appoint a representative to interview John J. Delio for his appointment to the Personnel Board.

CHAIRPERSON THOMSON MOVED TO APPOINT COUNCILOR DENNETT TO INTERVIEW JOHN J. DELIO FOR HIS APPOINTMENT TO THE PERSONNEL BOARD, SECONDED BY COUNCILOR SPILLER WITH ALL IN FAVOR. MOTION PASSES 7/0.

e. (100114-19) The Kittery Town Council moves to appoint a representative to interview Paul E. Lucy for his appointment to the Personnel Board.

CHAIRPERSON THOMSON MOVED TO APPOINT COUNCILOR LEMONT TO INTERVIEW PAUL E. LUCY FOR HIS APPOINTMENT TO THE PERSONNEL BOARD, SECONDED BY COUNCILOR DENAULT WITH ALL IN FAVOR. MOTION PASSES 7/0.

16. NEW BUSINESS

a. Donations/gifts received for Council disposition -

(110214-5) The Kittery Town Council moves to accept the gift of a thermal imager to the Fire Department from the Kittery Fire Association.

COUNCILOR SPILLER MOVED TO ACCEPT THE GIFT OF A THERMAL IMAGER TO THE FIRE DEPARTMENT FROM THE KITTEY FIRE ASSOCIATION, SECONDED BY COUNCILOR PELLETIER WITH ALL IN FAVOR. MOTION PASSES 7/0.

b. (110214-7) The Kittery Town Council moves to adopt its rules for the ensuing year.

COUNCILOR DENNETT MOVED THAT COUNCIL ADOPT ITS RULES FOR THE ENSUING YEAR, SECONDED BY COUNCILOR DENAULT, WITH ALL IN FAVOR. MOTION PASSES 7/0.

UNAPPROVED MINUTES

c. (110214-8) The Kittery Town Council moves to appoint Council members to on-going standing, ad hoc and Council committees.

CIP – Councilor Denault/Comprehensive Plan Update Committee – Councilor White/Economic Development Committee – Councilor Denault, Chairperson Thomson and Councilor Lemont/Open Space Committee – Councilor White/ORC – none/Recycling Scholarship Committee – Councilor Denault/Safford School Committee- Councilor Spiller/Shared Services Committee – Chairperson Thomson and Councilor White/Warrant Review (Municipal expenses) – 1. Councilor Dennett, 2. Councilor Pelletier, 3. Councilor Lemont/Municipal wages and benefits – 1. Chairperson Thomson, 2. Councilor White, 3. Councilor Pelletier/Warrant Review (School Expenses) 1. Councilor Lemont, 2. Chairperson Thomson, 3. Councilor Spiller/Wood Island Committee – Councilor Spiller and Councilor Pelletier.

CHAIRPERSON THOMSON MOVED TO APPOINT AS INDICATED, SECONDED BY COUNCILOR PELLETIER WITH ALL IN FAVOR. MOTION PASSES 7/0.

d. (110214-9) The Kittery Town Council moves to approve the disbursement warrants.

COUNCILOR PELLETIER MOVED TO APPROVE THE DISBURSEMENT WARRANTS, SECONDED BY COUNCILOR WHITE, WITH ALL IN FAVOR. MOTION PASSES 7/0.

e. (110214-10) The Kittery Town Council moves to appoint a representative to meet with the Chair of the Port Authority to interview Daniel Ford for his appointment to that board until 8/31/2019 (filling the vacancy of Barry Bush).

CHAIRPERSON THOMSON MOVED TO APPOINT COUNCILOR PELLETIER, SECONDED BY COUNCILOR WHITE, WITH ALL IN FAVOR. MOTION PASSES 7/0.

f. (110214-11) The Kittery Town Council moves to schedule a public hearing on proposed amendments to the fee schedule at Fort Foster.

CHAIRPERSON THOMSON MOVED TO SCHEDULE A PUBLIC HEARING ON PROPOSED AMENDMENTS TO THE FEE SCHEDULE AT FORT FOSTER ON NOVEMBER 24TH, SECONDED BY COUNCILOR WHITE WITH ALL IN FAVOR. MOTION PASSES 7/0.

g. (110214-12) The Kittery Town Council moves to set the Town Manager's salary, effective November 12, 2014, be set at \$106,575.

UNAPPROVED MINUTES

219 **COUNCILOR WHITE MOVED TO SET THE TOWN MANAGER'S SALARY,**
220 **EFFECTIVE NOVEMBER 12, 2014, BE SET AT \$106,575, SECONDED BY**
221 **COUNCILOR PELLETIER.**

222 Councilor Denault indicated that he did not think that this was fair as other employees'
223 contracts had not yet been finalized.

224 **COUNCILOR DENAULT MOVED TO POSTPONE ACTION ON THIS ITEM**
225 **UNTIL THE NEXT REGULAR MEETING, SECONDED BY COUNCILOR DENNETT.**

226 **A ROLL CALL WAS TAKEN WITH COUNCILORS SPILLER, LEMONT,**
227 **PELLETIER, WHITE AND CHAIRPERSON THOMSON OPPOSED. MOTION DOES**
228 **NOT CARRY 2/5.**

229 **A ROLL CALL VOTE WAS TAKEN ON THE MAIN MOTION WITH**
230 **COUNCILOR DENNETT AND COUNCILOR DENAULT OPPOSED. MOTION**
231 **PASSES 5/2.**

232 h. (110214-13) The Kittery Town Council moves to authorize the Town Manager to
233 close departments with the exception of essential personnel, the day after Thanksgiving,
234 November 28, 2014, with the understanding that employees will use their personal accumulated
235 time.

236 **COUNCILOR SPILLER MOVED TO AUTHORIZE THE TOWN MANAGER TO**
237 **CLOSE DEPARTMENTS WITH THE EXCEPTION OF ESSENTIAL PERSONNEL,**
238 **THE DAY AFTER THANKSGIVING, NOVEMBER 28, 2014, WITH THE**
239 **UNDERSTANDING THAT EMPLOYEES WILL USE THEIR PERSONAL**
240 **ACCUMULATED TIME, SECONDED BY COUNCILOR LEMONT, WITH ALL IN**
241 **FAVOR. MOTION PASSES 7/0.**

242 i. (110214-14) The Kittery Town Council moves to appoint a representative to meet
243 with the Chair of the CIP Committee to interview Chris Perkins for his re-appointment to that
244 Committee until 12/8/17.

245 **CHAIRPERSON THOMSON MOVED TO REAPPOINT CHRIS PERKINS TO**
246 **THE CIP COMMITTEE UNTIL 12/8/17, WITHOUT THE BENEFIT OF AN**
247 **INTERVIEW, SECONDED BY COUNCILOR SPILLER, WITH ALL IN FAVOR.**
248 **MOTION PASSES 7/0.**

249 17. **COUNCILOR ISSUE OR COMMENT**

250 Councilor Denault thanked the Police Department and Fire Department for providing the
251 police and fire logs.

UNAPPROVED MINUTES

252 Councilor Denault stated that he wanted to clarify that his no vote on the town manager's
253 salary was no reflection of her and that he wanted all the other department heads to move
254 forward at the same time.

255 Councilor Denault asked that the next agenda include appointing Robert Harris to the
256 Planning Board. Chairperson Thomson stated that he could not be appointed without an
257 interview and that would be put on the next agenda.

258 Councilor Spiller thanked the town clerk and her staff for a good election day.

259 Councilor Lemont stated that he was honored to serve on the Council and thanked the
260 voters for trusting in him.

261 Councilor Lemont indicated that a few of his neighbors were concerned with the traffic
262 leaving from Gate 2 in the afternoon. Chairperson Thomson stated that the Town Manager
263 would reach out to the Shipyard.

264 Councilor Lemont noted that he wanted to be on a proactive Council and thought they
265 could extend an invitation to the state senator to a meeting to discuss ideas. Chairperson
266 Thomson asked the Town Manager to contact her office and see if she could attend the
267 November 24th meeting.

268 Councilor White noted that Attorney MacEachern was recognized at the York County
269 Bar Association fall dinner for his excellence in the profession. He continued that the town was
270 lucky to have him.

271 18. COMMITTEE AND OTHER REPORTS

272 a. Communications from the Chairperson –

273 Chairperson Thomson stated that there was a workshop scheduled on November 17th with
274 ARQ Architects relative to the possibility of expansion at the Rice Library.

275 Chairperson Thomson stated there was a state sign on Whipple Road that was at a 45
276 degree angle and asked that the DPW straighten it.

277 b. Committee Reports – None

278 19. EXECUTIVE SESSION – None

279 20. ADJOURNMENT

280 **COUNCILOR PELLETIER MOVED TO ADJOURN, SECONDED BY**
281 **COUNCILOR DENAULT WITH ALL IN FAVOR. MEETING ADJOURNED AT 8:47**
282 **P.M.**

UNAPPROVED MINUTES

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UNAPPROVED MINUTES

KITTERY TOWN COUNCIL

November 24, 2014

COUNCIL CHAMBERS

1. Call to Order

Chairperson Thomson called the meeting to order at 7:00 P.M.

2. Introductory

Chairperson Thomson read the introductory.

3. Pledge of Allegiance

Chairperson Thomson led those present in the Pledge of Allegiance.

4. Roll Call

Answering the roll were Chairperson Jeffrey Thomson, Councilors Russell White, Frank Dennett, Chuck Denault, Jeffrey Pelletier, Judy Spiller and Ken Lemont.

5. Agenda Amendment and Adoption –

Chairperson Thomson stated that action on item 9(b) will be taken under a new item 13(l). The agenda was accepted as amended.

6. Town Manager's Report –

Town Manager Puff stated relative to the Athletic Field Master Plan, that they had received 3 proposals and interviews were going to be conducted the following week.

Town Manager Puff indicated relative to the traffic the PNSY, that she had spoken with the Shipyard who would remind the traffic director on duty that pedestrians needed to cross. She continued that they were going to be working on a better way to manage traffic at the Shipyard.

Town Manager Puff noted relative to the Kittery Pedestrian and Bicycle Improvement Plan, that they were working with KACTS and MDOT on the grant funded project to look at the pedestrian and bike traffic in the by-pass area. She said they expected to schedule a public hearing on the matter in the near future.

Town Manager Puff stated that during the high winds the flags were lowered or taken down to protect them.

Town Manager Puff indicated that the sewer expansion bids would be going out on December 5th with a return date of December 31st.

UNAPPROVED MINUTES

Town Manager noted that the Sewer Department had received a grant for \$1211 to purchase traffic safety barricades and signage from MMA.

Town Manager Puff indicated that they had conducted first round interviews for the CEO that week.

7. Acceptance of Previous Minutes – 10/15/14 & 11/10/14

The minutes of 10/15/14 were accepted as amended. The minutes of 11/10/14 were held in abeyance until the next regular meeting.

8. Interviews for the Board of Appeals and Planning Board –

Planning Board

- Robert Harris
- Matt Brock
- Deborah Driscoll Davis – re-appointment until 11/30/17

Robert Harris came to the podium and indicated that he was retired and had the time to participate on the board. He stated that he had some ideas and was up to speed on that the Board was doing and that he thought he could be of service.

Matt Brock came to the podium and indicated that he hoped to be able to help with the planning and development of the town. He noted that the Planning Department was in transition and it was a time where development and pressures existed and would likely increase.

COUNCILOR DENAULT NOMINATED ROBERT HARRIS TO THE PLANNING BOARD FOR A TERM ENDING 11/30/16, SECONDED BY COUNCILOR PELLETIER.

Chairperson Thomson stated that he had no compelling reason not to appoint the person who was on the waiting list for the longest.

COUNCILOR SPILLER NOMINATED MATT BROCK TO THE PLANNING BOARD FOR A TERM ENDING 11/30/16, SECONDED BY COUNCILOR WHITE.

A ROLL CALL WAS TAKEN ON MR. HARRIS'S NOMINATION WITH COUNCILOR SPILLER AND COUNCILOR WHITE OPPOSED. MOTION PASSES 5/2.

A ROLL CALL VOTE WAS TAKEN ON MR. BROCK'S NOMINATION WITH COUNCILOR DENNETT, COUNCILOR DENAULT AND CHAIRPERSON THOMSON OPPOSED. MOTION PASSES 4/3.

Mr. Harris was then appointed to the Planning Board because he had more positive votes.

UNAPPROVED MINUTES

Debbie Driscoll- Davis came to the podium and indicated that she enjoyed being on the Board and had the town's best interest in mind.

COUNCILOR SPILLER MOVED TO RE-APPOINT DEBORAH DRISCOLL-DAVIS TO THE PLANNING BOARD FOR A TERM ENDING 11/30/17, SECONDED BY COUNCILOR PELLETIER.

A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0.

Board of Appeals

- Gary Beers – until 12/1/17
- Brian Boyle – until 11/1/17

COUNCILOR WHITE MOVED TO RE-APPOINT GARY BEERS TO THE BOARD OF APPEALS FOR A TERM ENDING 12/1/17 AND BRIAN BOYLE TO THE BOARD OF APPEALS FOR A TERM ENDING 11/1/17, SECONDED BY COUNCILOR PELLETIER.

A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES 7/0.

9. All items involving the town attorney, town engineers, town employees or other town consultants or requested officials –

a. (110314-1) The Kittery Town Council moves to discuss the installation of steps on the town's ROW on Bowen Road.

Town Manager Puff gave a brief background on the issue and stated that the recommendation was to properly permit what was currently there and require replanting of the area.

Councilor Dennett stated that it was imperative to determine where the town owned the property or if it only had a right of way over the parcel. He continued that he would like to receive a legal opinion from the town attorney.

Shelly Bishop came to the podium and indicated that the steps that were currently in place were not up to code. She noted that they could either keep what was currently there or expand the steps to three feet with a rail system. Ms. Bishop stated that it would be difficult to replicate exactly what was there previously.

UNAPPROVED MINUTES

Chairperson Thomson indicated that he agreed with Councilor Dennett that a legal opinion should be obtained from the town attorney. The Chair then stated they would hear from each side on the matter.

Nick Clainos of Bowen Road came to the podium. He stated that he was the resident who was at issue and that they had hired an attorney to look into who owned the parcel and that it might never be known. Mr. Clainos continued that they did not take the steps out, but that they had disappeared and they were trying to fix the situation for the safety factor. He continued that they had gone to DEP, who had approved the project, and that they had also gone to the town but there had been some miscommunication. Mr. Clainos stated that it was never his intention to cause a problem.

Donna Jean Ahigian came to the podium and noted that no one was allowed to clear cut through the buffer zone and put stairs in. She continued that the stairs currently were not safe. Ms. Ahigian noted that she did not think that the taxpayers should be responsible for paying for this and that the town needed to send a clear message that changes to town property by individuals were not acceptable.

b. (110314-2) The Kittery Town Council moves to approve proposed amendments to the Fort Foster Rules and Regulations fee schedule.

Jeremy Paul, Assistant Director of the KCC, came to the podium and indicated that they wanted to do online registrations for events at Fort Foster. He continued that they already had the software to do so but the company was raising the fees and they wanted the customer to absorb the cost. Town Manager Puff indicated that the Parks Commission agreed it was time to raise the rates.

10. PUBLIC HEARINGS -

a. (110314-3) The Kittery Town Council moves to hold a public hearing on a proposed amendment to Chapter 10.2.2 Stop Intersections Designated, Section 10.2.2.1 On Public Ways, of the Kittery Town Code.

Town Manager Puff noted this issue dealt with two new stop signs on Manson Road. She noted that the police chief thought this would have a positive impact in the neighborhood.

COUNCILOR WHITE MOVED TO APPROVE A PROPOSED AMENDMENT TO CHAPTER 10.2.2 STOP INTERSECTIONS DESIGNATED, SECTION 10.2.2.1 ON PUBLIC WAYS, OF THE KITTERY TOWN CODE, SECONDED BY COUNCILOR SPILLER.

Councilor Denault stated he had heard from residents who were concerned that these new signs would create accidents as residents were not used to having them there. Councilor Dennett

UNAPPROVED MINUTES

137 said he did not think this would be beneficial as speeding was not the problem. Councilor
138 Pelletier indicated that he was not inclined to support this.

139 **A ROLL CALL VOTE WAS TAKEN WITH COUNCILOR WHITE IN FAVOR.**
140 **MOTION DOES NOT CARRY 1/6.**

141 11. Discussion

142 a. Discussion by members of the public –

143 Susan Emery came to the podium and stated that the helicopter noise was detracting from
144 the quality of life and thought they needed to work on getting rid of them. She also stated
145 relative to boards and commissions in town, that it used to be on a first come, first served basis,
146 and she thought it was the best process as it would eliminate politics and biases.

147 Steve Workman came to the podium and stated that he hoped that Council would vote in
148 favor of the Bike Maine event in September.

149 Shea Robbins came to the podium and stated that she thought the town needed to get
150 more involved with the helicopter noise problem by asking the companies to abide by the Pease
151 noise abatement procedures.

152 Mary Thron came to the podium and indicated that she hoped Council would vote in
153 favor of item 13(j).

154 Milton Hall came to the podium and asked what had happened to the shore and harbor
155 plan.

156 b. Response to public comment directed at a particular Councilor

157 c. Chairperson's response to public comments

158 Chairperson Thomson responded to Mr. Hall that the plan must still be with the Planning
159 Board.

160 Chairperson Thomson responded relative to the helicopter noise problem, that he had not
161 heard very many concerns from residents and thought that noise was going to be a problem
162 wherever you happened to be.

163 12. UNFINISHED BUSINESS – None

164 13. NEW BUSINESS

165 a. Donations/gifts received for Council disposition - None

UNAPPROVED MINUTES

b. (110314-4) The Kittery Town Council moves to approve a request from the Charity Defense March for the use of the Shapleigh Middle School track, soccer and baseball field and parking lots for the opening ceremonies site for the Charity Defense March to be held on June 25, 2015, 8 am to 5 pm and June 26, 2015, 4 am to 12:30 pm.

Dan Pallotta, President of the Charity Defense Council, came to the podium and indicated that they wanted to use the grounds for the opening ceremony and beginning of the three day walk from Kittery to Salem, MA. He continued that they were a national leadership organization in the non-profit sector and hoped the town would welcome them and that they were ready to do whatever was necessary for Council to approve this.

Councilor Dennett asked how many people would be attending the event. Mr. Pallotta responded it would be about 500 people. Chairperson Thomson stated his concern was the cost that the town had incurred for the maintenance of the fields. He continued that he thought that it might be a better idea for them to start the walk in Portsmouth. Mr. Pallotta responded that they thought that Maine would be a wonderful draw for the participants and they would really love to start in Kittery.

**COUNCILOR WHITE MOVED TO APPROVE THE REQUEST – NO SECOND.
MOTION FAILS.**

c. (110314-5) The Kittery Town Council moves to approve a request from Bike Maine to camp overnight (400 people) at Fort Foster, September 12, 2015, including parking of 150-200 vehicles from September 12-19, 2015.

Kim True, Ride Director for Bike Maine, came to the podium and indicated that they were hoping to use Fort Foster for the start of the 2015 event and went over the details of the event. She continued that they were be incurring all fees and the riders would be charged a \$15 fee for parking their car at Fort Foster which the town could use in any way it pleased. Chairperson Thomson asked if they had insurance to cover any possible vandalism to the cars. Ms. True indicated that they did and the riders would also be signing a waiver. Paige Mead of the Parks Commission indicated that he did not think that it would interfere with residents using the park and there was plenty of parking for everyone.

**COUNCILOR PELLETIER MOVED TO APPROVE THE REQUEST FROM
BIKE MAINE TO CAMP OVERNIGHT AT FORT FOSTER, SEPTEMBER 12, 2015,
INCLUDING PARKING OF 150-200 VEHICLES FROM SEPTEMBER 12-19, 2015,
SECONDED BY COUNCILOR SPILLER.**

**A ROLL CALL VOTE WAS TAKEN WITH COUNCILOR DENNETT
OPPOSED. MOTION PASSES 6/1.**

UNAPPROVED MINUTES

200 d. (110314-6) The Kittery Town Council moves to approve the disbursement warrants.

201 **CHAIRPERSON THOMSON MOVED TO APPROVE THE DISBURSEMENT**
202 **WARRANTS, SECONDED BY COUNCILOR SPILLER WITH ALL IN FAVOR.**
203 **MOTION PASSES 7/0.**

204 e. (110314-7) The Kittery Town Council moves to appoint a representative to meet with
205 the Chair of the Port Authority to interview Peter Walsh for his appointment to that board until
206 8/31/2018 (filling the unexpired term of Dan Arbo).

207 **COUNCILOR DENNETT MOVED TO APPOINT COUNCILOR SPILLER TO**
208 **MEET WITH THE CHAIR OF THE PORT AUTHORITY TO INTERVIEW PETER**
209 **WALSH FOR HIS APPOINTMENT TO THAT BOARD UNTIL 8/31/2018, SECONDED**
210 **BY COUNCILOR PELLETIER WITH ALL IN FAVOR. MOTION PASSES 7/0.**

211 f. (110314-8) The Kittery Town Council moves to accept the resignation from David
212 Lincoln from the Parks Commission.

213 **COUNCILOR LEMONT MOVED TO ACCEPT THE RESIGNATION FROM**
214 **DAVID LINCOLN FROM THE PARKS COMMISSION, SECONDED BY COUNCILOR**
215 **WHITE WITH ALL IN FAVOR. MOTION PASSES 7/0.**

216 g. (110314-9) The Kittery Town Council moves to appoint a representative to meet with
217 the Chair of the Parks Commission to interview Gale Turner for her appointment to move from
218 an alternate to full member until 5/3/17.

219 **CHAIRPERSON THOMSON MOVED TO APPOINT GALE TURNER AS A**
220 **FULL MEMBER TO THE PARKS COMMISSION UNTIL 5/3/17, WITHOUT THE**
221 **BENEFIT OF AN INTERVIEW, SECONDED BY COUNCILOR PELLETIER.**

222 **A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES**
223 **7/0.**

224 h. (110314-10) The Kittery Town Council moves to appoint John J. Delio to the
225 Personnel Board until 11/24/16.

226 **COUNCILOR DENNETT MOVED TO APPOINT JOHN J. DELIO TO THE**
227 **PERSONNEL BOARD UNTIL 11/24/16, SECONDED BY COUNCILOR PELLETIER,**
228 **WITH ALL IN FAVOR. MOTION PASSES 7/0.**

229 i. (110314-11) The Kittery Town Council moves to establish December 1, 2014, as the
230 effective date of the charter amendment approved by the voters on November 4, 2014.

UNAPPROVED MINUTES

231 **COUNCILOR DENNETT MOVED TO ESTABLISH DECEMBER 1, 2014, AS**
232 **THE EFFECTIVE DATE OF THE CHARTER AMENDMENT APPROVED BY THE**
233 **VOTERS ON NOVEMBER 4, 2014, SECONDED BY COUNCILOR PELLETIER WITH**
234 **ALL IN FAVOR. MOTION PASSES 7/0.**

235 j. (110314-12) The Kittery Town Council moves to schedule a public hearing on
236 proposed amendments to Title 16 as recommended by the Planning Board.

237 **COUNCILOR DENNETT MOVED TO SCHEDULE A PUBLIC HEARING ON**
238 **PROPOSED AMENDMENTS TO TITLE 16 ON DECEMBER 8, 2014, SECONDED BY**
239 **COUNCILOR PELLETIER WITH ALL IN FAVOR. MOTION PASSES 7/0.**

240 k. (110314-13) The Kittery Town Council moves to approve and sign the School
241 Department Policy on Disbursement Warrants for School Employee Wages and Benefits to
242 expire on November 30, 2015.

243 **COUNCILOR PELLETIER MOVED TO APPROVE AND SIGN THE SCHOOL**
244 **DEPARTMENT POLICY ON DISBURSEMENT WARRANTS FOR SCHOOL**
245 **EMPLOYEE WAGES AND BENEFITS TO EXPIRE ON NOVEMBER 30, 2015,**
246 **SECONDED BY CHAIRPERSON THOMSON WITH ALL IN FAVOR. MOTION**
247 **PASSES 7/0.**

248 h. The Kittery Town Council moves to approve amendments to the fee structure at Fort
249 Foster as proposed.

250 **COUNCILOR SPILLER MOVED TO APPROVE THE AMENDMENTS TO THE**
251 **FEE STRUCTURE AT FORT FOSTER AS PROPOSED, SECONDED BY COUNCILOR**
252 **PELLETIER.**

253 **A ROLL CALL VOTE WAS TAKEN WITH ALL IN FAVOR. MOTION PASSES**
254 **7/0.**

255 14. **COUNCILOR ISSUE OR COMMENT**

256 Councilor Denault asked when the town staff would be taking the diversity and
257 sensitivity training with MMA. Town Manager Puff responded that she had been in touch with
258 MMA and it would be scheduled in the near future.

259 Councilor Spiller asked for an update on the 103/Whipple Road sidewalk.

260 15. **COMMITTEE AND OTHER REPORTS**

261 a. Communications from the Chairperson –

UNAPPROVED MINUTES

262 Chairperson Thomson stated they would be having a workshop with Senator Hill on
263 December 8th at 6:15 PM.

264 Chairperson Thomson noted there was a goal setting workshop on December 15th.

265 b. Committee Reports – None

266 16. EXECUTIVE SESSION – None

267 17. ADJOURNMENT

268 **COUNCILOR SPILLER MOVED TO ADJOURN, SECONDED BY COUNCILOR**
269 **PELLETIER WITH ALL IN FAVOR. MEETING ADJOURNED AT 9:49 P.M.**

270

271

272

273

274



TOWN OF KITTERY, MAINE

TOWN CLERK'S OFFICE

200 Rogers Road, Kittery, ME 03904
Telephone: (207) 475-1328 Fax: (207) 439-6806

RECEIVED
DEC 02 2014
BY: KAC 10:00 AM

APPLICATION FOR APPOINTMENT TO TOWN BOARDS

NAME: Vern Gardner

RESIDENCE: 2 Tucker Cove, Kittery Point, Maine

MAILING (if different) P.O. Box 214 Portsmouth, New Hampshire 03802

E-MAIL ADDRESS: verngardner@comcast.net PHONE #: (Home) 439-4359 (Work) 439-9699

Please check your choices and list in order of priority by marking 1,2,3, etc.:

- | | |
|--|---|
| <input checked="" type="checkbox"/> Board of Appeals | <input type="checkbox"/> Board of Assessment Review |
| <input type="checkbox"/> Conservation Commission | <input type="checkbox"/> Mary Safford Wildes Trust |
| <input type="checkbox"/> Comprehensive Plan Update Committee | <input type="checkbox"/> Shellfish Conservation Committee |
| <input type="checkbox"/> Recycling Scholarship Selection Committee | <input type="checkbox"/> Economic Development Committee |
| <input type="checkbox"/> Parks Commission | <input type="checkbox"/> Open Space Committee |
| <input type="checkbox"/> Port Authority | <input type="checkbox"/> Planning Board |
| <input type="checkbox"/> Personnel Board | <input type="checkbox"/> Other _____ |

EDUCATION/TRAINING: Bachelor of Arts

RELATED EXPERIENCE (Including other Boards and Commissions)

Kittery

Economic Development
Cable Board
Board of Appeal
Comprehensive Plan Committee

Portsmouth

Citizen's Advisory
Economic Development Committee
Police Athletic League

PRESENT EMPLOYMENT: Self-employed

ARE YOU A REGISTERED VOTER OF THE TOWN OF KITTERY ☒ Yes ☐ No

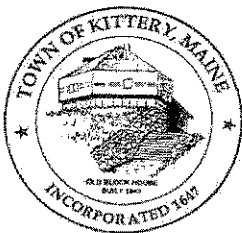
ANY KNOWN CONFLICT OF INTEREST: None

REASON FOR APPLICATION TO THIS BOARD: to follow in my father's footsteps

I HAVE ATTENDED AT LEAST TWO MEETINGS OF THE BOARD FOR WHICH APPLICATION IS BEING MADE. I AGREE TO ATTEND ALL MEETINGS, EXCEPT FOR SICKNESS OR EMERGENCY, AND WILL ADVISE THE CHAIRPERSON WHEN I AM UNABLE TO ATTEND, IF APPOINTED.

Vern Gardner
SIGNATURE OF APPLICANT

December 02, 2014
DATE



TOWN OF KITTERY

Office of the Town Manager

200 Rogers Road, Kittery, ME 03904

Telephone: 207-475-1329 Fax: 207-439-6806

ncolbertpuff@kitteryme.org

Nancy Colbert Puff
Town Manager

INTEROFFICE MEMORANDUM

TO: TOWN COUNCIL
FROM: TOWN MANAGER'S PROPOSAL REVIEW GROUP
SUBJECT: REVIEW OF PROPOSED CHANGES TO TITLE 16
DATE: NOVEMBER 24, 2014
CC: CHRIS DIMATTEO, INTERIM TOWN PLANNER

Town Code Amendments Title 16 – In general, we have kept our comments limited to the text of the ordinance change itself, not the accompanying memoranda.

→ **Item 1** – no comments

→ **Item 2:** We talked at length about the differing definitions for dwelling unit (lines 39-43). While the State prescribes its own definition for Shoreland Protection purposes, we question whether the Shoreland will act as a true overlay definition (e.g. units must be at least 650 s.f. of habitable space, or does it operate independently of the Kittery Code definition (e.g. no min. s.f. required).

→ **Item 3:** While we noticed inconsistent use of the hyphen in the term “non-conforming,” it is consistently used as “nonconforming” in the ordinance.

16.7.3.5.12 – Lines 116-117: we recommend that the clause “the smallest residential lot permitted under the town’s land use base codes, Title 16.3” be changed to “5,000 s.f.” so that the reader need not guess what that measurement is, and to be consistent with the preceding 2a which notes 20,000 s.f. in specific.

Lines 123-140 – In reading this section closely, it occurred to us that items a-c and footnotes 1-3 apply to all cases in every instance. We question if this section should be reorganized to make this more apparent to the reader.

Lines 143-147 – We questioned the language that clarifies the intent of this section. If a conforming lot were to result from an adjustment to a common boundary, it is also possible that it “remains a legally non-conforming lot of record?” Also: delete hyphen in the word “nonconforming” from line 146.

Item 4: We had trouble understanding how the current ordinance works vs. what this new calculation will result in.

16.7.8.1 Net Residential Acreage (line 60-62) – We note that the term subdivision also applies to structures, and question how this might be applied in an instance of conversion of an existing 1-unit structure into 3 or more units. This may cause unintended consequences.

Also: the calculation results in a land area, not in a number of dwelling units (line 60). To arrive at the number of units, one must then divide the net acreage by the minimum land area per dwelling unit standard for each zone. Therefore, perhaps line 60 should read: “Net Residential Acreage calculation is used to determine ~~determines~~ ...subdivision, by first determining the usable area of a parcel.”

16.7.8.1 C (lines 66-68) – Given that wetland setbacks are already a regulatory restriction, we question if subtracting 50% of the setback is “double-counting.”

16.7.8.1 E (lines 70-71) – Subtraction of easements may cause owners additional pause in the instance where they are requested to provide utility and other easements that may serve public purposes. We are concerned about this possibility.

16.7.8.1 G (lines 73-77) – We question the definition of “primary portion of the parcel,” especially given that this calculation may be applied in a multiple parcel development/subdivision proposal.

16.7.8.1 H (line 78) – We assume this means only land within C-1, C-2, and C-3.

16.7.8.1 J & K (lines 80-83) – These sections refer to soils which are “somewhat poorly, poorly, and very poorly drained,” and then refer to 16.2 for definition. Definitions have been deleted from that section.

In addition, we note that K provides for no subtraction on somewhat poorly drained soils if on public sewer, and we question whether this might also be considered as to appropriateness for section J. We read in the justification (line 28-30), that the current ordinance prohibits septic systems on poor and very poor soils, and as a result, wonder if the drafters intended to continue this limitation even in the event the development is located on sewer.

16.7.8.1 M (lines 86-87) – We question how elimination of any residential development potential in the Commercial Fisheries/Maritime (16.3.2.18) and Resource Protection Overlay (16.3.2.19) zones works together with the uses that are specifically allowed in the overlay sections. Perhaps additional changes need to be made to those zones as well in order for the proposal to work properly. We also wonder if passage will cause broad nonconformity within those areas. A map illustration may help in furthering how this might work.

16.7.8.3 (lines 93-95) – We suggest the name of this section might parallel 16.7.8.1 to provide greater clarity, e.g. “Net Residential Acreage Calculation for Residential Development not Subject to Subdivision.” We note that this Article VIII is entitled Net Residential Acreage, but then section 16.7.8.3 exists primarily to redirect readers to the definition section, and may have no place here.

16.2 Definitions

Soils #2 (lines 104-111) – This refers back to 16.7.8.1 J & K, but provides no definition for somewhat poorly, poorly, and very poorly drained soils. We understand that the referenced guide does provide these definitions, but we believe they should be spelled out here.

Minimum land area per dwelling unit (lines 123-143) – While this definition appears to propose that it applies only to land not subject to subdivision, each zone contains a minimum land area per dwelling unit standard that then refers back to this definition. Our question arises: once the net residential acreage calculation is determined, then does each lot fall under the minimum land area per dwelling unit requirements?

Chapter 16.3, Section 16.3.2.1-6 D (lines 143-202) – Each minimum land area standard exempts properties for single-family units if they were conforming prior to October 25, 2012. If the new minimum land area per dwelling unit definition is applied and does not exempt conforming properties from Oct. 26, 2012 to the date of enactment, is there an unintended consequence of making properties nonconforming retroactively?

Item 5: In general, the name of the Sewer Department should be consistent. We note it is referenced herein as the “town WTD” Wastewater Treatment Department, and “WSD.” See lines 110-112, and 120).

Section 16.8.7.1.A (line 105) – This sentence references Town Code Title 13 Chapter 13.1 “Public Sewer System,” while we believe the title of the Chapter is “Sewer Service System.”

Section 16.8.7.1 B (lines 104-107) – Town Code Chapter 13.1 does not require a connection for homes within 100’ for which gravity flow “cannot be obtained.”

Section 16.8.7.1 E (line 125) – Proposed edit: delete the words “to be used.”

Section 16.8.7.2 C1 (line 176) – Proposed edit: insert words as follows – “is proposed, the subsurface wastewater disposal system must...”

Item 6: Section 16.8.16.3 (line 59) – We question if perhaps poorly drained soils might be added to the credit, consistent with Section 16.7.8.1 J.

Item 7: We have no comments on this item.

→ **Item 8:** We have no comments on this item.

Town of Kittery Ordinance Revision Memorandum

Originator(s): T. Emerson, Planning Board Chair	Council Sponsor(s): J. Thomson, Chair
Council meeting date: November 10, 2014 Joint Workshop Meeting: 9/08/14	Title: Approved Plan Expiration, Requests for Extension, and Expiration of Wetlands Alteration Approval
Town code section: Title 16, §16.10.9.1.4, 16.10.9.1.5 and 16.9.3.8	History: amended proposal

ENCLOSURES: CODE AMENDMENT AND ENACTMENT ORDINANCE {FORTHCOMING}

PURPOSE OF PROPOSAL:

To provide clarity as to when and under what conditions an approved plan expires and the ability to obtain an extension.

SUMMARY OF PROPOSAL/AMENDMENT:

1. The existing code language is ambiguous as to how to apply the conditions necessary to determine if a plan's approval is expired. The proposal separates the conditional clauses with two sentences.
2. The proposal deletes 16.10.9.1.5 *Requests for Extension* as it provides unnecessary redundancy with 16.10.9.1.4 *Approved Plan Expiration*, which now addresses extensions.
3. Clarity is provided as to what happens if a plan approval does expire.
4. The total length of time an approved subdivision plan may be extended is reduced from 10 years to 5 years.

JUSTIFICATION:

The proposal removes ambiguity making clearer to applicants the expectations for completion of approved development plans, simplifying administration of the Code by staff and the Planning Board.

FISCAL IMPACT:

None

CODE AMENDMENT

Chapter 16.10 DEVELOPMENT PLAN APPLICATION AND REVIEW

Article IX. Post Approval

16.10.9.1 Post Approval Actions Required.

16.10.9.1.4 Approved Plan Expiration.

A. ~~A subdivision plan's approval by the Planning Board will expire if work on the development has not commenced within one (1) year from Planning Board date of approval, or Where work has commenced within one (1) year of such approval, is not substantially the approval will expire unless work is complete within three (3) years from of the original date of Planning Board approval. The Planning Board may, by formal action, grant extensions for an inclusive period from original approval date not to exceed ten (10) years.~~

B. ~~A non-subdivision For all other development plans, plan's approval by the Planning Board approval will expire if work on the development is has not commenced within one (1) year from date of approval, or Where work has commenced within one year of approval, such approval will expire if work is not substantially complete within two (2) years from of the original date of Planning Board approval. The Planning Board may, by formal action, grant extensions for an inclusive period from original approval date not to exceed three years.~~

C. The Planning Board may, on a case-by-case basis, grant extensions to an approved plan expiration date upon written request by the developer for an inclusive period from the original approval date, not to exceed five (5) years for a subdivision plan and three (3) years for all other development plans.

D. When a plan's approval expires the applicant may re-apply subject to the current Town Code.

16.10.9.1.5 Requests for Extension.

~~The Planning Board may grant extensions to expiration dates upon written request by the developer, on a case-by-case basis. {Modified and moved to C. above}~~

Chapter 16.9 DESIGN AND PERFORMANCE STANDARDS - NATURAL ENVIRONMENT

Article III. Conservation of Wetlands Including Vernal Pools

16.9.3.8 Expiration of Wetlands Alteration Approval.

A. ~~Wetlands Alteration Approval will expire if work on the development has not commenced within one (1) year of Planning Board date of approval, or is not substantially Where work has commenced within one (1) year of approval, such approval will expire unless work is complete within (2) two years of the original approval date, the approval for work in the wetlands will expire. The Board may, by formal action, grant extensions to the approval provided the request is submitted to the Board prior to the expiration of approval.~~

B. The Planning Board may, on a case-by-case basis, grant extensions to an approved plan expiration date upon written request by the developer for an inclusive period from the original approval date, not to exceed five (5) years for a subdivision plan and three (3) years for all other development plans.

Town of Kittery Ordinance Revision Memorandum

Originator(s): T. Emerson, Planning Board Chair;	Council Sponsor(s): J. Thomson, Chair
Council meeting date: Workshop: 9/8/14 Meeting: November 10, 2014	Title: various provisions related to Shoreland Zoning
Town code section: Title 16, §16.3.2.17, 16.7.3.5.6 through 16.7.3.6.1, 16.8.28, and 16.2	History: amended proposal

ENCLOSURES: CODE AMENDMENT, ENACTMENT ORDINANCE, AND PLANNING BOARD REVIEW NOTES

1 PURPOSE OF PROPOSAL:

2
3 The proposal allows for compliance with the State's Mandatory Shoreland Zoning Act.
4
5

6 SUMMARY OF PROPOSAL/AMENDMENT:

7
8 It became evident while working with Michael Morse OF the Maine Department of Environmental
9 Protection (MDEP) on various Shoreland Zoning provisions that the Town is not fully in compliance
10 with the State's Mandatory Shoreland Zoning Act, specifically to MDEP conditional approvals, orders
11 #5-99 (dated 12/29/1999) and #23-10 (dated 9/2/2010), see ATT. A and B. A modification to order #5-
12 99 (5-99-A) was issued 8/4/2000 allowing the less restrictive provisions for Badger Island, see ATT. C.
13 The conditions of approval noted in the 1999 and 2010 orders were never fully implemented.
14
15

16
17 JUSTIFICATION:

18
19 The Town, per 38 M.R.S.A. SECTION 438-A(4), is obligated to adopt "zoning and land use ordinances
20 that are consistent with or are no less stringent than the minimum guidelines adopted by the
21 {Environmental Protection} Board".
22
23

24 FISCAL IMPACT:

25
26 None

CODE AMENDMENT

Chapter 16.2 DEFINITIONS

16.2.2 Definitions.

Dwelling means a building designed or used as the living quarters for one or more families. The term does not include motel, rooming house, hotel, inn, club, trailer, or structures solely used for transient or overnight occupancy.

Dwelling unit means a room or group of rooms forming a habitable unit for one family with facilities used or intended to be used for living, sleeping, cooking, eating, and sanitary facilities. It comprises at least six hundred fifty (650) square feet of habitable floor space, except for elderly housing, an accessory dwelling unit, or a temporary, intra-family dwelling unit. The term does not include a trailer.

Dwelling unit (in the Shoreland and Resource Protection Overlay Zones) means a room or group of rooms designed and equipped exclusively for use as permanent, seasonal, or temporary living quarters for only one family at a time, and containing cooking, sleeping and toilet facilities. The term shall include mobile homes and rental units that contain cooking, sleeping, and toilet facilities regardless of the time-period rented. Recreational vehicles are not dwelling units.

Easement means the authorization of a property owner for the use by another, and for a specified purpose, of any designated part of the owner's property.

Chapter 16.3 LAND USE ZONE REGULATIONS

Article II. Zone Definitions, Uses, Standards

16.3.2.13 Mixed Use MU.

D. Standards.

1. All development and the use of land in the MU zone must meet the following standards. Kittery's Design Handbook illustrates how these standards can be met. In addition, the design and performance standards of Chapters 16.8 and 16.9 must be met.

2. Minimum Dimensional Standards.
The following apply:

Minimum lot size:

lots with frontage on Route 1	200,000 square feet
lots without frontage on Route 1	80,000 square feet

Minimum street frontage on road with access along U.S. Route 1, Haley Road, Lewis Road, or Cutts Road	250 feet
other streets or approved ways	150 feet

Minimum front yard	60 feet
Minimum rear and side yards	30 feet
Maximum building height	40 feet
Maximum height above grade of building-mounted signs	40 feet

Minimum setback from water body and wetland water dependent uses	0 feet
--	--------

Minimum setback from streams, water bodies and wetlands	in accordance with Table 16.9, Section 16.3.2.17 and Appendix A, Fee
---	--

Minimum land area per unit for eldercare facilities that are connected to the public sewerage system:	
dwelling unit with two or more bedrooms	5,000 square feet
dwelling unit with less than two bedrooms	4,000 square feet
residential care unit	2,500 square feet

Minimum land area per bed for nursing care and convalescent care facilities that are connected to the public sewerage system	2,000 square feet
Buffer to I-95 ROW	40 feet
Buffer to neighboring lot with an existing residence within 100 feet of the lot line	40 feet
Vegetated buffer to be maintained between the MU and R-RL zones	40 feet

NOTE 1: For single-family dwellings, one dwelling unit is allowed for each two hundred thousand (200,000) square feet of land area. A lot of record having a land area of more than two hundred thousand (200,000) square feet that was improved with a single-family dwelling as of April 1, 2004 may be divided into two lots with a single-family dwelling on each lot provided that each of the lots contains at least forty thousand (40,000) square feet of land area and meets the other dimensional standards of the zone. Sections 16.3.2.1 D.1 and D.2 as set forth in the Residential - Rural zone apply and no further subdivision is allowed.

NOTE 2: ~~For dwelling units that are part of a mixed-use building and are connected to the public sewerage system, one dwelling unit is allowed for each twenty thousand (20,000) square feet of buildable land area. If the parking for the residential units is integrated into the building, the minimum required buildable land area per dwelling unit is reduced to fifteen thousand (15,000) square feet.~~ For dwelling units that are part of a mixed-use building and are connected to the public sewerage system, one dwelling unit is allowed for each twenty thousand (20,000) square feet of buildable land area. Within the Resource Protection and Shoreland Overlay zones, one dwelling unit is allowed for each forty thousand (40,000) square feet of land area within these zones. If the parking for the residential units is encompassed within the building, the minimum required buildable land area per dwelling unit is reduced to fifteen thousand (15,000) square feet, except in the Resource Protection and Shoreland Overlay zones where the area per dwelling unit remains forty thousand (40,000) square feet.

NOTE 3: For elderly housing dwelling units that are connected to the public sewerage system, one dwelling unit is allowed for each fifteen thousand (15,000) square feet of buildable land area. Within the Resource Protection and Shoreland Overlay zones, one dwelling unit is allowed for each forty thousand (40,000) square feet of land within these zones. If the parking for the elderly units is integrated into encompassed within the building, the minimum required buildable land area per dwelling unit is reduced to ten thousand (10,000) square feet, except in the Resource Protection and Shoreland Overlay zones where the area per dwelling unit remains forty thousand (40,000) square feet.

3. Retail Use Limitation.

Retail use, including parking areas and other supporting unvegetated areas for retail use, is limited to not more than fifteen percent (15%) of the developable area of any lot or portion of a lot within the mixed use zone.

16.3.2.17 Shoreland Overlay Zone OZ-SL.

D. Standards.

1. Minimum lot standards

a. Minimum lot size by base zone, within the

Residential-Village (R-V) zone	8,000 square feet
Residential-Urban (R-U) zone	20,000 square feet
Residential-Rural (R-RL), Residential-Suburban (R-S) and Residential-Kittery Point Village (R-KPV) zones	40,000 square feet
Commercial (C1), (C2), (C3), Industrial (IND), Business-Local (B-L) and Business-Local 1 (B-L1) zones	60,000 square feet
Residential-Rural Conservation (R-RLC) zone	80,000 square feet
Business-Park (B-PK) zone	120,000 square feet
<u>Mixed-Use Badgers Island (MU-BI) zone</u>	<u>6,000 square feet</u>
<u>Mixed-Use Kittery Foreside (MU-KF) zone</u>	<u>10,000 square feet</u>

b. Minimum land area per dwelling unit by base zone, within the

Residential-Village (R-V) zone	8,000 square feet
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Business-Park (B-PK) zone	10,000 square feet
Residential-Urban (R-U), Business-Local (B-L) and Business-Local 1 (B-L1) zones	20,000 square feet
Mixed Use (M-U), Residential-Rural (R-RL), Residential-Suburban (R-S) and Residential-Kittery Point Village (R-KPV) zones	40,000 square feet.
Residential-Rural Conservation (R-RLC) zone	80,000 square feet.
Mixed-Use Badgers Island (MU-BI) zone	6,000 square feet*
* 3,000 square feet for the first two dwelling units	
Mixed-Use Kittery Foreside (MU-KF) zone	10,000 square feet

c. Minimum Shore frontage by base zone per lot and dwelling unit

Mixed Use-Badgers Island (MU-BI)	25 feet
Residential-Village (R-V) and Residential Urban (R-U) zones	
Mixed-Use Kittery Foreside (MU-KF) zones	50 feet
Mixed Use (M-U), Commercial (C1), (C2), (C3), Industrial (IND), Business-Park (B-PK), Business-Local (B-L) and Business-Local 1 (B-L1) zones (shore frontage per lot)	150 feet
(shore frontage per dwelling unit)	50 feet
Residential-Rural (R-RL), Residential-Suburban (R-S), and Residential-Kittery Point Village (R-KPV) zones (shore frontage per lot)	150 feet
(shore frontage per dwelling unit)	100 feet
Residential-Rural Conservation (R-RLC) zone (per lot and dwelling unit)	250 feet

The minimum shore frontage requirement for public and private recreational facilities is the same as that for residential development in the respective zone.

d. The total footprint of areas devegetated for structures, parking lots and other impervious surfaces, must not exceed twenty (20) percent of the lot area, including existing development, except in the following zones:

- i. Mixed Use -Badgers Island (MU-BI) and Mixed Use Kittery Foreside (MU-KF) Zones, where the maximum lot coverage is sixty (60) percent. The Board of Appeals may approve a miscellaneous appeal application to increase allowable lot coverage in the Mixed Use -Badgers Island (MU-BI) zone to seventy (70) percent where it is clearly demonstrated that no practicable alternative exists to accommodate a water-dependent use.
- ii. Commercial (C1, C-2, C-3), Business – Local (B-L and B-L1), and Industrial (IND) Zones where the maximum lot coverage is seventy (70) percent.
- iii. Notwithstanding the above limits, vegetated surfaces must exceed fifty (50) percent of the lot area when the lot, being no greater in size than ten thousand (10,000) square feet, is situated in both the Residential - Urban Zone (R-U) and the Shoreland Overlay Zone.
- iv. In the shoreland zone within the Mixed Use (M-U) zone, the maximum lot coverage is 20%.

2. Principal and Accessory Structures – Setbacks and Development.

a. All new principal and accessory structures (except certain patios and decks per Section 16.3.2.17.D.2.b, must be set back as follows:

- i. At least one hundred (100) feet, horizontal distance, from the normal high water line of any water bodies, tributary streams, the upland edge of a coastal wetland, or the upland edge of a freshwater wetland, and seventy-five (75) feet, horizontal distance, from the normal high-water line of any water bodies, or the upland edge of a wetland on the Mixed Use - Badgers Island and the Kittery Foreside Zones, unless modified according to the terms of Sections 16.3.2.14.D & E and 16.3.2.15.D & E., except that in the Commercial Fisheries/Maritime Uses Overlay Zone there is no minimum setback requirement. In the Resource Protection Overlay Zone the setback requirement is 250 feet, horizontal distance, except for structures, roads, parking

spaces or other regulated objects specifically allowed in the zone, in which case the setback requirements specified above apply.

ii. The water body, tributary stream, or wetland setback provision does not apply to structures which require direct access to the water body or wetland as an operational necessity, such as piers and retaining walls, nor does it apply to other functionally water-dependent uses.

b. Accessory patios or decks no larger than five hundred (500) square feet in area must be set back at least seventy-five (75) feet from the normal high water line of any water bodies, tributary streams, the upland edge of a coastal wetland, or the upland edge of a freshwater wetland. Other patios and decks must satisfy the normal setback required for principal structures in the Shoreland Overlay Zone.

c. If there is a bluff, setback measurements for principal structures, water and wetland must be taken from the top of a coastal bluff that has been identified on Coastal Bluff maps as being "highly unstable" or "unstable" by the Maine Geological Survey pursuant to its "Classification of Coastal Bluffs" and published on the most recent Coastal Bluff map. If the applicant and Code Enforcement Officer are in disagreement as to the specific location of a "highly unstable" or "unstable" bluff, or where the top of the bluff is located, the applicant is responsible for the employment a Maine Registered Professional Engineer, a Maine Certified Soil Scientist, or a Maine State Geologist qualified to make a determination. If agreement is still not reached, the applicant may appeal the matter to the Board of Appeals.

d. Public access to the waterfront must be discouraged through the use of visually compatible fencing and/or landscape barriers where parking lots, driveways or pedestrian routes abut the protective buffer. The planting or retention of thorny shrubs, such as wild rose or raspberry plants, or dense shrubbery along the perimeter of the protective buffer is encouraged as a landscape barrier. If hedges are used as an element of a landscape barrier, they must form a solid continuous visual screen of at least three feet in height immediately upon planting.

e. On a nonconforming lot of record on which only a residential structure exists, and it is not possible to place an accessory structure meeting the required water body, tributary stream or wetland setbacks, the Code Enforcement Officer may issue a permit to place a single accessory structure, with no utilities, for the storage of yard tools and similar equipment. Such accessory structure must not exceed eighty (80) square feet in area nor eight (8) feet in height, and must be located as far from the shoreline or tributary stream as practical and meet all other applicable standards, including lot coverage and vegetation clearing limitations. In no case will the structure be allowed to be situated closer to the shoreline or tributary stream than the existing principal structure.

f. The lowest floor elevation or openings of all buildings and structures, including basements, must be elevated at least one foot above the elevation of the 100-year flood, the flood of record, or in the absence of these, the flood as defined by soil types identified as recent flood-plain soils.

g. The total footprint of areas devegetated for structures, parking lots and other impervious surfaces, must not exceed twenty (20) percent of the lot area, including existing development, except in the following zones:

i. Badgers Island and Kittery Foreside Zones, where the maximum lot coverage is sixty (60) percent. The Board of Appeals may approve a miscellaneous appeal application to increase allowable lot coverage in the Badgers Island district to seventy (70) percent where it is clearly demonstrated that no practicable alternative exists to accommodate a water-dependent use.

ii. Commercial (C-1, C-2, C3), Mixed Use (MU), Business – Local (B-L and B-L1), and Industrial (IND) Zones where the maximum lot coverage is seventy (70) percent.

Notwithstanding the above limits, non-vegetated surfaces must not exceed fifty (50) percent of the lot area when the lot, being no greater in size than ten thousand (10,000) square feet, is situated in both the Residential - Urban Zone (R-U) and the Shoreland Overlay Zone

h. Stairways or similar structures may be allowed with a permit from the Code Enforcement Officer, to provide shoreline access in areas of steep slopes or unstable soils provided the:

i. structure is limited to a maximum of four feet in width;

ii. structure does not extend below or over the normal high-water line of a water body or upland edge of a

wetland (unless permitted by the Department of Environmental Protection pursuant to the Natural Resources Protection Act, 38 M.R.S. §480-C); and

iii. applicant demonstrates that no reasonable access alternative exists on the property.

i. If more than one dwelling unit, principal governmental, institutional, commercial or industrial structure or use, or combination thereof, is constructed or established on a single parcel in the shoreland zone, all dimensional requirements shall be met for each additional dwelling unit, principal structure, or use.

Article III. Nonconformance (Ordained 9-26-11; Effective 10-27-11)

16.7.3.5.4 Nonconforming Structure Relocation.

C. When it is necessary to remove vegetation within the water or wetland setback area to relocate a structure, ~~the Board of Appeals or Planning Board (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone.), may require replanting of native vegetation to compensate for the destroyed vegetation is required., and The Board of Appeals or Planning Board (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone.) may restrict mowing around and pruning~~ of the replanted native vegetation to encourage a more natural state of growth. Replanting ~~will be~~ is required as follows:

16.7.3.5.6 Nonconforming Structure Reconstruction.

A. Any nonconforming structure which is located less than the required setback from a water body, tributary stream, or wetland and which is removed, damaged or destroyed, ~~by any~~ regardless of the cause, by more than 50% of the market value of the structure before such damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Planning Board (in cases where the structure is located in a Shoreland Overlay or Resources Protection Overlay Zone) or Code Enforcement Officer, in accordance with this Code.

B. In no case will a structure be reconstructed or replaced so as to increase its non-conformity. If the reconstructed or replacement structure is less than the required setback it may not be any larger than the original structure, except as allowed pursuant to Section 16.7.3.5.5, Nonconforming Structures Repair and/or Expansion and 16.7.3.6.1 Nonconforming Structure Expansion, as determined by the nonconforming floor area and volume of the reconstructed or replaced structure at its new location.

C. If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure may be replaced or constructed ~~reconstructed~~ at less than the setback requirement for a new structure. When it is necessary to remove vegetation to replace or reconstruct a structure, vegetation ~~will~~ shall must be replanted in accordance with Section 16.7.3.5.4.C, Nonconforming Structure Relocation. Application for a demolition permit for any structure that has been partially damaged must be made to the Code Enforcement Officer.

D. Any nonconforming structure which is located less than the required setback from a water body, tributary stream, or wetland and removed, damaged or destroyed ~~by any cause through no fault of action by the owner by~~ 50% or less of the market value of the structure before such damage, destruction or removal, may be reconstructed in-place if a permit is obtained from the Code Enforcement Officer or the Planning Board (in cases where the structure was located in the Shoreland Overlay or Resources Protection Overlay Zone) within twelve (12) months of the established date of damage, ~~or destruction, or removal.~~

E. In determining whether the structure reconstruction or replacement meets the setback to the greatest practical extent the Planning Board or Code Enforcement Officer must consider, in addition to the criteria in Section 16.7.3.5.4, Nonconforming Structure Relocation, the physical condition and type of foundation present, if any.

320
321
322 **16.7.3.5.7 Nonconforming Use Expansion.**

323 Expansion of a nonconforming use of any structure or land area other than that occupied as such when created
324 is not permitted with the following exceptions:

325
326 A. uses in conformity with Chapter 16.7; and

327
328 B. nonconforming residential uses located within the Resource Protection Overlay, or Shoreland Overlay Zone
329 with Planning Board approval, may expand by thirty (30) percent or less of the structure, in floor area or volume,
330 during the lifetime of the structure if the applicant can prove the proposal is consistent with the review standards
331 in Section 16.3.2.17.D.2.

332
333 **16.7.3.5.8 Nonconforming Use Change – Review Authority and Evaluations.**

334 The reviewing authority per subsections A B. and C below, may require evaluations be prepared by a person
335 certified and/or qualified to perform the required evaluation. It is the burden and responsibility of the applicant to
336 bear the costs for such evaluations. In the event there are existing official maps, data and/or reports for general
337 use, the applicant is encouraged to submit copies of these documents to the reviewing authority. In determining
338 that no greater adverse impact will occur, the applicant may be required to submit an evaluation in writing
339 regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and
340 wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain
341 management, archaeological and historic resources, and commercial fishing and maritime activities, and other
342 functionally water-dependent uses.

343
344 A. Administratively. The Town Planner and the Code Enforcement Officer may approve the change of use of a
345 nonconforming structure where it can be deemed the proposed use is a conforming use and the proposed use
346 does not impact a water body, tributary stream, or wetland. See Section 16.4.3.5.

347
348 B. By Board of Appeals. Outside the areas regulated by Shoreland Overlay Zone or Resource Protection
349 Overlay Zone, an existing nonconforming use may be changed to another nonconforming use with approval of
350 the Board of Appeals provided the proposed use is not more nonconforming.

351
352 C. By Planning Board. Within areas regulated by Shoreland Overlay Zone or Resource Protection Overlay Zone,
353 an existing nonconforming use may be changed to another nonconforming use with the approval of the Planning
354 Board per Section ~~16.7.3.5.2~~ 16.7.3.6.2.

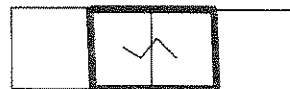
355
356 **16.7.3.5.9 Nonconforming Lots of Record.** (Ordained 1-23-12; Effective 2-23-12)

357 A. Nonconforming Lots: In any district, notwithstanding limitations imposed by other sections of this Code,
358 single noncontiguous lots legally created when recorded may be built upon consistent with the uses in the
359 particular zone. These provisions apply even though such lots fail to meet the minimum requirements for area or
360 width, or both, which are applicable in the zone, provided that yard dimensions and other requirements, not
361 involving area or width, of the lot conform to the regulation for the zone in which such lot is located.
362 Relaxation of yard and other requirements not involving area or width may be obtained only through
363 miscellaneous variation request to the Board of Appeals.

364
365 **16.7.3.5.10 Contiguous Non-Conforming Lots.** (Ordained 1-23-12; Effective 2-23-12)

366 A. Contiguous Nonconforming Lots. If two or more contiguous
367 nonconforming lots or portions thereof are in single or joint ownership
368 of record, and if all or part of the lots do not meet the dimensional
369 requirements of this Code, and if one or more of the lots are vacant or
370 contain no principal structure, the lots shall must be combined to the
371 extent necessary to meet the dimensional requirements common
372 ownership and if a combination of such lots or a portion thereof
373 constitutes a lot of nearer conforming size, such combination is

A.



374 deemed to constitute a single lot.

375
376 B. Contiguous Built Upon Nonconforming Lots. If two or more
377 contiguous lots or parcels are in a single or joint ownership of record
378 at the time of adoption of this Code, if all or part of the lots do not
379 meet the dimensional requirements of this Code, and if a principal use
380 or structure exists on each lot, the non-conforming lots may be
381 conveyed separately or together, provided that the State Minimum Lot
382 Size Law (12 MRSA §4807-A through 4807-D) and the State of Maine
383 Subsurface Wastewater Disposal Rules are complied with.
384 If there exists a legally created principal structure on each of the
385 contiguous nonconforming lots or portions thereof that would
386 otherwise require the lots to be combined as provided herein, the
387 contiguous lots need not be combined to create a single lot as
388 required by Section A above.



389
390 C. Contiguous Partially Built Upon Lot. If two or more contiguous
391 lots or parcels are in a single or joint ownership of record at the time of
392 or since adoption or amendment of this Code, if any of these lots do
393 not individually meet the dimensional requirements of this Code or
394 subsequent amendments, and if one or more of the lots are vacant or
395 contain no principal structure, the lots shall be combined to the extent
396 necessary to meet the dimensional requirements. If one or more of
397 the contiguous nonconforming lots is vacant or contains no principal
398 structure, the lots must be combined to the extent necessary to meet
399 the purposes of this Code as required by Section A above.



400
401 This subsection does not apply:

- 402 1. to any Planning Board approved subdivision located outside the Shoreland Overlay Zone which was
403 recorded in the York County Registry of Deeds on, or before July 13, 1977;
404 2. if one or more of the contiguous lots is served by a public sewer, or can accommodate a subsurface
405 sewage disposal system in conformance with this Code Section 16.8.7.1—~~Septic Waste Disposal~~, and the State
406 of Maine Subsurface Wastewater Disposal Rules; and
407 i. if each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or
408 ii. if any lot(s) that do not meet the frontage and lot size requirements of Section 16.3.2.17.D.1 are
409 reconfigured or combined so each new lot contains at least 100 feet of shore frontage and 20,000 square
410 feet of lot area.

411
412 D.G. Single Lot Division.

413 If two principal structures existing on a single lot legally created when recorded, each may be sold on a separate lot
414 provided the Board of Appeals determines that each resulting lot is as conforming as practicable to the dimensional
415 requirements of this Code. If three or more principal structures existing on a single lot legally created when
416 recorded, each may be sold on a separate lot provided the Planning Board determines that each resulting lot is as
417 conforming as practicable to the dimensional requirements of this Code.

418 (Ordained 1-23-12; Effective 2-23-12)

419
420 **16.7.3.5.11 Nonconforming Parking or Loading Space.** (Ordained 9-26-11; Effective 10-27-11)

421 A structure and/or use which is nonconforming as to the requirements for off-street loading and/or parking
422 spaces may not be enlarged or added to unless off-street space is provided sufficient to satisfy the requirements
423 of this Code for both the original and addition or enlargement of the structure or use.

424
425 **16.7.3.5.12 Nonconforming Steps.** (Ordained 9-26-11; Effective 10-27-11)

426 The addition of steps and landings, exterior to the structure does not constitute expansion. Such steps are not to
427 be considered part of the structure for such determination. Step landings may not exceed three feet by three feet
428 (3'x3') in size.

429
430
431 **16.7.3.6 Nonconforming Structures in Shoreland and Resource Protection Overlay Zones.**

(Ordained 9-26-11; Effective 10-27-11)

16.7.3.6.1 Nonconforming Structure Expansion.

A nonconforming structure may be added to, or expanded, after obtaining Planning Board approval and a permit from the Code Enforcement Officer. Such addition or expansion must not increase the non-conformity of the structure and must be in accordance with the subparagraphs below.

A. After January 1, 1989, if any portion of a structure is less than the required setback from the normal high-water line of a water body or tributary stream or the upland edge of a wetland, that portion of the structure will not be permitted to expand, as measured in floor area or volume, by thirty percent (30%) or more during the lifetime of the structure.

B. If a replacement structure conforms to the requirements of Section ~~16.7.3.6.1.A~~ 16.7.3.5.4 and Section 16.7.3.5.6 and is less than the required setback from a water body, tributary stream or wetland, the replacement structure will not be permitted to expand if the original structure existing on January 1, 1989, has been expanded by 30% in floor area and volume since that date.

C. Whenever a new, expanded or replacement foundation is constructed under a nonconforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Planning Board, basing its decision on the criteria specified in Section 16.7.3.5.4 B, Nonconforming Structure Relocation. If the completed foundation does not extend beyond the exterior dimensions of the structure, except for expansion in conformity with Section 16.7.3.6.1.A, and the foundation does not cause the structure to be elevated by more than three (3) additional feet, as measured from the uphill side of the structure (from original ground level to the bottom of the first floor sill), it will not be considered to be an expansion of the structure.

16.7.3.6.2 Nonconforming Use Change.

An existing nonconforming use may be changed to another nonconforming use with the approval of the Planning Board provided the proposed use has no greater adverse impact on any water body or wetland, or on the subject and adjacent properties and resources, including water dependent uses in the Commercial Fisheries/Maritime Uses Overlay Zone than the former use, as determined by the Planning Board. Within the area regulated by Shoreland Overlay Zone or Resource Protection Overlay Zone, for the determination of no greater adverse impact, the Planning Board may require written documentation from the applicant, regarding the probable effects on public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archaeological and historic resources, and commercial fishing and maritime activities, and other functionally water-dependent uses.

Chapter 16.8 DESIGN AND PERFORMANCE STANDARDS – BUILT ENVIRONMENT

Article XXVIII. Single and Duplex Family Dwellings

16.8.28.1 Single and Duplex Family Dwellings in Resource Protection and Shoreland Overlay Zones.

In addition to the criteria specified in Section 16.6.6 and ~~176.10.8.3.4~~, applicable to the granting of a special exception use request, the Planning Board may approve an application for a single or duplex family dwelling special exception use request, where applicable, provided the applicant demonstrates all of the following conditions are met:

A. There is no location on the property, other than a location within the Shoreland Overlay or Resource Protection Overlay Zones, where a single family dwelling the structure can be built, or similarly for a duplex in the Shoreland Overlay zone.

486 B. The lot on which the structure is proposed is undeveloped and was established and recorded in the York
487 County Registry of Deeds before inclusion in the Shoreland or Resource Protection Overlay Zones.

Town of Kittery Ordinance Revision Memorandum

Originator(s): T. Emerson, Planning Board Chair	Council Sponsor(s): J. Thomson, Chair
Council meeting date:	Title: Adjustment of Common Boundary Line of Non-conforming lots.
Town code section: Title 16, §16.7.3.5.10 through 12	History: new proposal

**ENCLOSURES: CODE AMENDMENT (PG. 2) AND ENACTMENT ORDINANCE {FORTHCOMING},
PURPOSE OF PROPOSAL:**

The proposal would simplify the process by which to approve limited adjustments to lot lines of developed, legally nonconforming lots within and outside the Shoreland Overlay zone.

SUMMARY OF PROPOSAL/AMENDMENT:

Section 16.7.3.5.12.A.1 (line 106) would permit the Code Enforcement Officer to approve a simple, equal swap of land when there is no change to the square area of either adjusted legally nonconforming lots.

Section 16.7.3.5.12.A.2 (line 110) would permit the Board of Appeals to approve adjustments to lot lines outside the Shoreland Overlay zone, even if the resulting lot size would be made more non-conforming. This would only apply if the new lots are 20,000 sq. feet or greater (if connected to septic); or 5,000 sq. feet or greater (if connected to town sewer).

Section 16.7.3.5.12.A.3 (line 119) would permit the Planning Board to approve adjustments to lot lines that result in a more non-conforming lot within the Shoreland Overlay zone, if the resulting lots conform as much as is practicable to the Maine Department of Environmental Protection (MDEP) Mandatory Shoreland zoning minimum lot standards and shoreline requirements.

Under no circumstances could the resulting lots be smaller than 20,000 sq. feet or have less than 100 feet of shoreline. If the lots currently conform to the minimum standard (30,000 sq. feet or greater, with 150 feet of shoreline) they would have to remain conforming. If both lots currently do not meet MDEP minimum standards, lot lines would not be permitted to be adjusted.

JUSTIFICATION:

This amendment would give the town needed flexibility to approve lot size changes, while protecting the environment within the Shoreland Overlay zone.

Current law does not permit the Town to make minor lot size adjustments to legally non-conforming developed lots, even if there are good reasons to do so.

This amendment is needed to permit lot adjustments that would result in less irregular lot lines and more practical access to utilities or existing structures.

FISCAL IMPACT: None.

CODE AMENDMENT

16.7.3.5.10 Contiguous Nonconforming Lots. (Ordained 1-23-12; Effective 2-23-12)

A. Contiguous Nonconforming Lots. If two or more contiguous nonconforming lots or portions thereof are in common ownership and if a combination of such lots or a portion thereof constitutes a lot of nearer conforming size, such combination is deemed to constitute a single lot.



B. Contiguous Built Upon Nonconforming Lots. If there exists a legally created principal structure on each of the contiguous nonconforming lots or portions thereof that would otherwise require the lots to be combined as provided herein, the contiguous lots need not be combined to create a single lot as required by Section A above.



C. Contiguous Partially Built Upon Lot. If one or more of the contiguous nonconforming lots is vacant or contains no principal structure, the lots must be combined to the extent necessary to meet the purposes of this Code as required by Section A above.



This subsection does not apply:

1. to any Planning Board approved subdivision which was recorded in the York County Registry of Deeds on, or before July 13, 1977;
2. if one or more of the contiguous lots is served by a public sewer, or can accommodate a subsurface sewage disposal system in conformance with this Code Section 16.8.7.1 – Septic Waste Disposal, and the State of Maine Subsurface Wastewater Disposal Rules; and
 - i. if each lot contains at least 100 feet of shore frontage and at least 20,000 square feet of lot area; or
 - ii. if any lot(s) that do not meet the frontage and lot size requirements of Section 16.3.2.17D.1 are reconfigured or combined so each new lot contains at least 100 feet of shore frontage and 20,000 square feet of lot area.

16.7.3.5.11C. Single Lot Division of a Nonconforming Lot.

If two principal structures ~~existing~~ exist on a single lot legally created when recorded, each may be sold on a separate lot provided the Board of Appeals determines that each resulting lot is as conforming as practicable to the dimensional requirements of this Code. If three or more principal structures ~~existing~~ exist on a single lot legally created when recorded, each may be sold on a separate lot provided the Planning Board determines that each resulting lot is as conforming as practicable to the dimensional requirements of this Code. (Ordained 1-23-12; Effective 2-23-12)

~~16.7.3.5.11 Nonconforming Parking or Loading Space.~~ (Ordained 9-26-11; Effective 10-27-11)

~~A structure and/or use which is nonconforming as to the requirements for off-street loading and/or parking spaces may not be enlarged or added to unless off-street space is provided sufficient to satisfy the requirements of this Code for both the original and addition or enlargement of the structure or use. {MOVED AND RENUMBERED 16.7.3.5.13}~~

16.7.3.5.12 Nonconforming Steps. (~~Ordained 9-26-11; Effective 10-27-11~~)

~~The addition of steps and landings exterior to the structure does not constitute expansion. Such steps are not to be considered part of the structure for such determination. Step landings may not exceed three feet by three feet (3'x3') in size. {MOVED AND RENUMBERED 16.7.3.5.14}~~

16.7.3.5.12 Adjustment of Common Boundary Line of Nonconforming Lots.

A. The common property line of two nonconforming lots of record, each with legally created principal structures, can be adjusted if:

1. The Code Enforcement Officer (CEO) determines that the resulting lots are not more nonconforming than the existing lots with respect to the dimensional requirements of this Code;
or

2. Where the lots are located entirely outside the Shoreland Overlay Zone and the CEO determines the proposed lot line adjustment makes the lot more nonconforming, the Board of Appeals determines that each resulting lot is as conforming as practicable to the dimensional requirements of this Code; and

a. each resulting lot is not less than 20,000 S.F. in lot size when not served by public sewer; or

b. each resulting lot is not less than the smallest residential lot permitted under the town's land use base zones, Title 16.3, when served by public sewer.

3. Where all or part of either lot is located in the Shoreland Overlay Zone and the CEO determines the proposed lot line adjustment makes the lot more nonconforming, the Planning Board determines that each resulting lot is as conforming as practicable to the Maine Department of Environmental Protection (MDEP) Mandatory Shoreland Zoning minimum lot standards for principal structures and uses¹; and

a. each resulting lot is not less than 20,000 S.F. in lot size and not less than 100 feet in shore frontage^{2,3}; and

b. a lot that is conforming to the MDEP Mandatory Shoreland Zoning minimum lot standards for principal structures and uses remains conforming to those requirements¹; and

c. common boundary lines may not be adjusted when both subject lots are non-conforming per state minimum lot size requirement.³

¹ Chapter 1000: Guidelines for Municipal Shoreland Zoning Ordinances, Section 15.A Minimum Lot Standards; adjacent to Tidal Areas: 30,000 S.F. lot size with 150 feet of shore frontage; and adjacent to Non-Tidal Areas: 40,000 S.F. lot size with 200 feet of shore frontage.

² Title 16.7.3.5.12.A.3.a is allowed only when both subject lots are under the same single or joint ownership

³ Adherence to State Minimum Lot Size Law (12 M.R.S.A. sections 4807-A through 4807-D) and State of Maine Subsurface Wastewater Disposal Rules or public sewer is required

B. It is not the intention of the above subsection (*Adjustment of Common Boundary Line of Non-Conforming Lots*) to allow for the creation of an additional lot. A property line adjustment in accordance with this subsection and Title 16.7 does not constitute the creation of a new lot and the adjusted lot remains a legally non-conforming lot of record, not applicable to the joining of lots.

{NEW}

16.7.3.5.143 Nonconforming Parking or Loading Space. (Ordained 9-26-11; Effective 10-27-11)

A structure and/or use which is nonconforming as to the requirements for off-street loading and/or parking spaces may not be enlarged or added to unless off-street space is provided sufficient to satisfy the requirements of this Code for both the original and addition or enlargement of the structure or use. {MOVED AND ONLY AMENDED SECTION NUMBER}

16.7.3.5.124 Nonconforming Steps. (Ordained 9-26-11; Effective 10-27-11)

The addition of steps and landings exterior to the structure does not constitute expansion. Such steps are not to be considered part of the structure for such determination. Step landings may not exceed three feet by three feet (3'x3') in size. . {MOVED AND ONLY AMENDED SECTION NUMBER}

**Town of Kittery
Ordinance Revision Memorandum**

Originator(s): T. Emerson, Planning Board Chair	Council Sponsor(s): J. Thomson, Chair
Council meeting date: November 10, 2014	Title: Signs – General Requirements (LED lighting)
Town code section: Title 16.8.10.2.C	History: Amendment

ENCLOSURES: CODE AMENDMENT AND ENACTMENT ORDINANCE {FORTHCOMING}

PURPOSE OF PROPOSAL:

LED lit signage is currently prohibited. However, the prohibition of this type of lighting appears to be a burden on applicants requesting sign permits when sign manufacturers (i.e. for gas signage) provide no other alternative. Additionally, the reduced long-term cost of LED lighting is appealing to business owners.

SUMMARY OF PROPOSAL/AMENDMENT:

Remove reference to LED lighting in Title 16.8.10.2.C. as follows:

C. No sign may contain a moving message board, ~~LED lighting~~ or intermittent illumination, except where necessary in time/temperature/date signs.

JUSTIFICATION:

Allows the use of the more long-term economical, environmentally sensitive LED lights and, in some instances, the only available lighting method for new or replacement signage.

FISCAL IMPACT:

NONE

34 CODE AMENDMENT
35 CHAPTER 16.8 – DESIGN AND PERFORMANCE STANDARDS-BUILT ENVIRONMENT
36 ARTICLE X-SIGNS

37 **16.8.10.2 General Requirements.**
38

39 A. No sign may be erected, posted, enlarged, or substantially changed without a permit issued by the
40 Code Enforcement Officer (CEO) and also approved by the Town Planner, except where Section
41 16.8.10.9 provides otherwise.
42 (Ordained 9/26/11; effective 10/27/11)
43

44 B. No exterior sign may be artificially illuminated except where hooded or shielded or otherwise
45 designed to prevent direct light spilling onto traveled ways or neighboring property.
46

47 C. No sign may contain a moving message board, ~~LED lighting~~ or intermittent illumination, except where
48 necessary in time/temperature/date signs.
49

50 D. Any sign that interferes with or closely imitates any official traffic sign, signal or device is prohibited.
51

52 E. No sign designed to be transported by means of wheels is allowed, unless said vehicle is used in the
53 normal day-to-day transportation operations of the business. All trailer signs are prohibited.
54

55 F. Any changeable message signs must be integrated into a permanently-mounted sign. Such a
56 changeable message Board is to be mounted a minimum of three and one-half feet above ground level.
57

58 G. All signs must be maintained in a safe and sound structural condition.
59

60 H. Advertising. No advertising or signage is permitted on wireless communication services facilities.
61

62 I. Any sign not expressly permitted herein is prohibited.
63

TOWN COUNCIL REPORT – ECONOMIC DEVELOPMENT COMMITTEE

RESPONSIBLE INDIVIDUAL: George Dow, Chairman

Date: Dec 8, 2014

Subject: Economic Development Committee

Background:

- History from March 23, 2011 previously reported (available, not enclosed)
- Within the context of the Kittery Comprehensive Plan and the Economic Development Plan, the mission of the Town of Kittery Economic Development Committee (EDC) is to enhance the many attributes that the Town of Kittery has to offer. The Council-established committee was given the charge of economic development planning, municipal site identification and development, and working with new business opportunities as they present themselves. The EDC is dedicated to helping create opportunities for economic development through desirable business growth, expansion, retention and attraction by working as partners to develop a climate conducive to maintaining the quality of life in this great community of Kittery, Maine.
- In January Council approved extension of the Committee until December 31st, 2014
- The EDC met throughout the year to work toward creating a more vibrant and cultivated community by:
 - Serving as a conduit between the commercial economic interests in Kittery, Maine and its' municipal government;
 - Encouraging the economic well-being and expansion of the existing commercial businesses located within Kittery, Maine;
 - Responsibly assisting in developing properties within Kittery, Maine in an effort to improve the aesthetics of the town/community while providing additional revenue; and,
 - Reviewing Town ordinances, policies, and practices to determine their impact on existing and proposed commercial businesses.

Current Situation:

The Committee desires to continue its efforts in 2015 to:

- Work with the interest parties in the Business Park, growth North of Rte 1, the Kittery Water District relocation and lastly perhaps the foreside group. The Business Park has a consultant working with (3) parties to bring some unified growth direction.
- Begin to understand the growth opportunities North of Rte 1, from a knowledge standpoint only at this time. It would be appropriate to look at this so that we might be able to advocate for businesses from a position of knowledge.
- Support any development initiative at the Water District location which brings with it opportunities if we can get the District to relocate. Presently, the District will only consider a move if they don't have to pay anything in the process for a new building and land.
- Work with Foreside business owners where possible as advocates to the Council, Planning Board and perhaps Town Citizenry.

Recommendation: The Committee requests Town Council extend the existence of the EDC past its current sunset date of 12/31/2014 to a future date certain of December 31, 2015 at which time we will again review the status of the Economic Development Committee and its continued need.



NOV 20 2014

TOWN OF KITTERY, MAINE BY: 3:40 pm

TOWN CLERK'S OFFICE

200 Rogers Road, Kittery, ME 03904

Telephone: (207) 475-1328 Fax: (207) 439-6806

APPLICATION FOR APPOINTMENT TO TOWN BOARDS

NAME: William H. Fredwell
RESIDENCE: 9 Sparhawk Lane, Kittery ME 03905
MAILING (if different) _____
E-MAIL ADDRESS: bfredwell@gmail.com PHONE #: (Home) 439-1877 (Work) 207-752-6613

Please check your choices and list in order of priority by marking 1,2,3, etc.:

- | | |
|---|--|
| <input type="checkbox"/> Zoning Board of Appeals | <input type="checkbox"/> Board of Assessment Review |
| <input type="checkbox"/> Conservation Commission | <input type="checkbox"/> Mary Safford Wildes Trust |
| <input type="checkbox"/> Cable Television Rate Regulation Board | <input type="checkbox"/> Shellfish Conservation Committee |
| <input type="checkbox"/> Recycling Scholarship Selection Comm. | <input type="checkbox"/> Community Center Bldg. Comm./Rec. Comm. |
| <input type="checkbox"/> Parks Commission | <input type="checkbox"/> Open Space Committee |
| <input type="checkbox"/> Port Authority | <input type="checkbox"/> Planning Board |
| <input type="checkbox"/> Personnel Board | <input checked="" type="checkbox"/> Other <u>12,000 Library</u> |

EDUCATION/TRAINING: BA, History - Colleton College, MA, Boston University
RELATED EXPERIENCE (Including other Boards and Commissions) _____

PRESENT EMPLOYMENT: retired - teach ESL part-time in Portland, ME

ARE YOU A REGISTERED VOTER OF THE TOWN OF KITTERY ☒ Yes ☐ No

ANY KNOWN CONFLICT OF INTEREST: no

REASON FOR APPLICATION TO THIS BOARD: long-time resident - volunteer: love place

I HAVE /HAVE NOT ATTENDED AT LEAST TWO MEETINGS OF THE BOARD FOR WHICH APPLICATION IS BEING MADE. I AGREE TO ATTEND ALL MEETINGS, EXCEPT FOR SICKNESS OR EMERGENCY, AND WILL ADVISE THE CHAIRPERSON WHEN I AM UNABLE TO ATTEND, IF APPOINTED.

W H Fredwell
SIGNATURE OF APPLICANT

11-6-14
DATE

From: Tom Hibschan braveboathbr@comcast.net
Subject: comp plan
Date: December 2, 2014 at 12:16 PM
To: Tom Hibschan braveboathbr@comcast.net

RECEIVED
DEC 02 2014

BY: KPS
1:10 PM



TOWN OF KITTERY, MAINE

TOWN CLERK'S OFFICE
200 Rogers Road, Kittery, ME 03904
Telephone: (207) 475-1328 Fax: (207) 439-6806

APPLICATION FOR APPOINTMENT TO TOWN BOARDS

NAME: Tom Hibschan

RESIDENCE: 188 Brave Boat Harbor Road, Kittery Pt. 03905

MAILING (if different)

E-MAIL ADDRESS: braveboathbr@comcast.net PHONE #: (Home) 439-6721 (Work) cell 475-8164

Please check your choices and list in order of priority by marking 1, 2, 3, etc.:

- | | |
|---|--|
| <input type="checkbox"/> Board of Appeals | <input type="checkbox"/> Board of Assessment Review |
| <input type="checkbox"/> Conservation Commission | <input type="checkbox"/> Mary Safford Wildes Trust |
| <input type="checkbox"/> Cable Television Rate Regulation Board | <input type="checkbox"/> Shellfish Conservation Committee |
| <input type="checkbox"/> Recycling Scholarship Selection Comm. | <input type="checkbox"/> Community Center Bldg. Comm./Rec. Comm. |
| <input type="checkbox"/> Parks Commission | <input type="checkbox"/> Open Space Committee |
| <input type="checkbox"/> Port Authority | <input type="checkbox"/> Planning Board |
| <input type="checkbox"/> Personnel Board | <input checked="" type="checkbox"/> Other comp plan update |

EDUCATION/TRAINING: BFA Visual communications

RELATED EXPERIENCE (Including other Boards and Commissions)
Shapleigh school bldg Renovation

Parks Commission

PRESENT EMPLOYMENT: retired

ARE YOU A REGISTERED VOTER OF THE TOWN OF KITTERY ☒ Yes ☐ No

ANY KNOWN CONFLICT OF INTEREST:

REASON FOR APPLICATION TO THIS BOARD: have strategic planning experience

I HAVE ☐ HAVE NOT ☒ ATTENDED AT LEAST TWO MEETINGS OF THE BOARD FOR WHICH APPLICATION IS BEING MADE. I AGREE TO ATTEND ALL MEETINGS, EXCEPT FOR SICKNESS OR EMERGENCY, AND WILL ADVISE THE CHAIRPERSON WHEN I AM UNABLE TO ATTEND, IF APPOINTED.

SIGNATURE OF APPLICANT

By TH on 12/2/14

DATE